

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JILL AYRES, an individual;

Plaintiff,

vs.

JOAN WELDON, in her official capacity;
BRENDA CHASE, in her official capacity;
TALANA SAYRE, in her official and
individual capacities; and DIANE MARTIG, in
her official capacity;

Defendants.

4:17CV3116

ORDER

This matter is before the Court on Plaintiff's Motion to Re-Serve Individual Defendant Sarah Brock ([Filing No. 51](#)). The Court will deny the motion.

Plaintiff commenced this action in state court on August 3, 2017, naming several defendants, including Sarah Brock ("Brock"). ([Filing No. 1-1](#)). Defendants removed the case to this Court on September 1, 2017. ([Filing No. 1](#)). On January 19, 2018, the undersigned magistrate judge entered an order requiring Plaintiff to show cause why this action should not be dismissed as to Brock for failure to serve her within 90-days, as required by [Fed. R. Civ. P. 4\(m\)](#). ([Filing No. 28](#)). Plaintiff did not respond to the show cause order. Accordingly, on February 12, 2018, the undersigned magistrate judge entered a Findings and Recommendation ("F&R") recommending to Chief Judge Laurie Smith Camp that Brock be dismissed as a defendant for failure of service and want of prosecution. ([Filing No. 33](#)). Plaintiff was notified that failure to timely object to the F&R "may constitute a waiver of any objection." Plaintiff did not object to the F&R, and on May 14, 2018, Chief Judge Smith Camp adopted the F&R and dismissed Brock from this action. ([Filing No. 39](#)).

Plaintiff has now moved the Court for an extension of time to serve Brock pursuant to [Fed. R. Civ. P. 4](#). However, pursuant to the procedure discussed above, Brock was dismissed as a party from this case. The Court cannot extend the deadline for Plaintiff to serve a dismissed party, and Rule 4 does not govern under the circumstances. Instead, if Plaintiff wishes to add a party defendant, she must file a motion for leave to amend pursuant to Rule 15.¹ Accordingly,

¹ At this time, the Court will not comment on the merits of that motion.

IT IS ORDERED that Plaintiff's Motion to Re-Serve Individual Defendant Sarah Brock ([Filing No. 51](#)) is denied for the reasons discussed above.

Dated this 29th day of August, 2018.

BY THE COURT:

s/ Michael D. Nelson
United States Magistrate Judge